

BEFORE THE  
**Federal Communications Commission**

WASHINGTON, D.C. 20554

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**MAR 11 1996**

In the Matter of

Revision of Part 22 and Part 90 of  
the Commission's Rules to  
Facilitate Future Development of  
Paging Systems

Implementation of Section 309(j)  
of the Communications Act --  
Competitive Bidding.

To: The Commission

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**WT Docket No. 96-18**

**PP Docket No. 93-253**

**DOCKET FILE COPY ORIGINAL**

**REPLY COMMENTS  
OF  
MOBILEMEDIA COMMUNICATIONS, INC.  
ON INTERIM LICENSING PROPOSALS**

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**OF**

Pursuant to Section 1.415 of the rules and regulations of the Federal Communications Commission ("Commission"), MobileMedia Communications, Inc., the parent company of MobileMedia Paging, Inc. and Mobile Communications Corporation of America (collectively "MobileMedia/MobileComm"), by its attorneys, hereby submits these Reply Comments in response to the Comments filed concerning the Commission's imposition of a "freeze" on virtually all paging applications. Along with the rest of the paging industry, MobileMedia/MobileComm urges the Commission to lift the freeze and to process all applications in due course. MobileMedia/MobileComm's local frequencies used to augment its nationwide

network also should be designated as exclusive nationwide channels and exempted from any auctions.

## **I. SUMMARY**

1. Rarely have Comments submitted in a Commission proceeding been so uniform in their opposition to a Commission proposal. Virtually all of the Comments support MobileMedia/MobileComm's opposition to the freeze. They echo the same themes raised by MobileMedia/MobileComm: that continuation of the freeze will cause an immediate degradation of service to the public; that it will stymie growth of the paging industry; and that it will prevent paging operators from offering a multitude of new, competitive paging services. MobileMedia/MobileComm urges the Commission to heed the widespread concern of the paging industry, and to remove the freeze and process all pending and new applications subject to existing "MX" procedures, if applicable, and auctions, if ultimately adopted in this proceeding.

2. The few exceptions to the freeze, proposed in the Notice, will be inadequate to allow the paging industry to grow and expand at its current 35% rate. In particular, secondary status for sites extending existing interference contours will be extremely disruptive to millions of consumers who require continuous, primary coverage across wide areas. If the Commission forges ahead with the freeze,

however, despite widespread opposition by the Commenters, secondary status would be "better than nothing."

3. MobileMedia/MobileComm's local frequencies used to augment its nationwide network should be designated as nationwide channels. MobileMedia/MobileComm uses frequencies 931.8125 MHz and 931.8625 MHz to augment its nationwide paging service on 931.8875 MHz, just as MTel uses 931.4375 MHz to augment its nationwide service on 931.9375 MHz. In the Notice, however, the Commission proposed to designate only the local paging channel occupied by MTel (931.4375 MHz) as a nationwide channel. MTel's situation is as "unique" as MobileMedia/MobileComm's. Designating the frequency 931.4375 MHz as nationwide, while maintaining a local allocation for the frequencies 931.8125 MHz and 931.8625 MHz, clearly would be arbitrary and capricious and without legal or factual foundation.

## **II. REPLY COMMENTS**

### **A. MobileMedia/MobileComm's Local Frequencies Used to Augment its Nationwide Network Should be Designated as Nationwide Channels.**

4. In the Notice, the Commission noted that MTel, the licensee of one of the three nationwide CCP channels (931.9375 MHz), also uses a second channel (931.4375 MHz) to augment its paging network on its nationwide channel. Although

the frequency 931.4375 MHz currently is allocated as a local paging channel, MTel uses it "virtually on a nationwide basis," according to the Commission. Notice at ¶ 27. The Commission sought comment on whether 931.4375 MHz should be designated a nationwide -- rather than local -- channel, and whether it should be excluded from the pending geographic licensing proposal. Notice at ¶ 27.

5. As demonstrated below, MobileMedia/MobileComm's situation is identical to MTel's. Both MobileMedia/MobileComm's and MTel's local frequencies used to augment nationwide operations should be allocated for nationwide use.

6. In its Comments responsive to the Notice, MTel strongly encouraged the Commission to reallocate the frequency 931.4375 MHz to Mtel on a nationwide basis. MTel argued that "there is no question but that (MTel's) situation is unique." MTel Comments, page 4. According to MTel, this reallocation would promote regulatory parity, formalize the operational status of the channel and serve the public interest. MTel Comments, page 3.

7. MTel explained that SkyTel, a subsidiary of MTel, operates on the frequency 931.4375 MHz in concert with its network paging frequency (931.9375 MHz) to provide nationwide paging service. According to MTel, SkyTel currently is licensed to operate over 700 transmitters on the frequency 931.4375 MHz

in over 200 of the nation's largest markets.<sup>1</sup> MTel indicated that as SkyTel continues to augment its system, it will either add sites in existing markets (where SkyTel's presence precludes other carriers from applying) or will expand into smaller markets (where other carriers have other frequencies from which to choose). As a result, according to MTel, a reallocation of the frequency 931.4375 MHz on a nationwide basis would not adversely impact any other party.

8. MobileMedia/MobileComm supports the Commission's proposal to designate as nationwide channels any local channels used to augment allocated nationwide 931 MHz band systems. Such a designation would recognize the actual, marketplace use of MobileMedia/MobileComm's local 931 MHz frequencies to augment its nationwide system on the frequency 931.8875 MHz. As the Commission indicated in its Notice, it is in the public interest to facilitate nationwide operations by excluding these channels from the Commission's geographic licensing proposal.

**1. MobileMedia/MobileComm is "Unique," Just Like MTel.**

9. As demonstrated below, MTel's characterization of its situation on the frequency 931.4375 MHz as "unique" is equally applicable to

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<sup>1</sup> MTel does not indicate which of the largest markets were used in its analysis. Presumably, it used the 305 Cellular MSAs and 428 RSAs, for a total of 733 markets.

MobileMedia/MobileComm for the frequencies 931.8125 MHz and 931.8625 MHz.<sup>2</sup>

Like MTel, MobileMedia/MobileComm is also a licensee of one of the three nationwide CCP channels (931.8875 MHz). Like MTel, MobileMedia/MobileComm also operates additional channels (931.8125 MHz and 931.8625 MHz) as part of its nationwide paging network. Like MTel, MobileMedia/MobileComm also uses the frequencies 931.8125 MHz and 931.8625 MHz on "virtually a nationwide basis."

Notice at paragraph 27. Like MTel, MobileMedia/MobileComm also will continue to use these frequencies either by adding sites in existing markets (where MobileMedia/MobileComm's presence precludes other carriers from applying) or by expanding into smaller markets (where other carriers have other frequencies from which to choose).

10. Although MobileMedia/MobileComm uses the frequencies 931.8125 MHz and 931.8625 MHz to augment its nationwide paging service, these frequencies -- like 931.4375 MHz -- currently are allocated as local paging channels. Like 931.4375 MHz, the frequencies 931.8125 MHz and 931.8625 MHz should be

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<sup>2</sup> In the Notice, the Commission referred to Mobile Telecommunication Technology Corp., 6 FCC Record Rcd. 138, recon. 7 FCC Record 4061 (1992), where the Commission granted MTel's request for federal preemption to the extent that state rate or entry regulation interfered with MTel's federal interstate radio system. Notice at paragraph 27, n.61. As a result of the Omnibus Budget Act of 1993, however, that action is now essentially a moot point, because states generally are preempted from all such regulations. 47 U.S.C. 332 (c)(3).



designated as nationwide channels and excluded from the Commission's application freeze and geographic licensing proposal.

11. MTel states in its Comments that it operates over 700 transmitters on 931.4375 MHz in over 200 of the nation's largest markets. According to a recent study of the Top 200 markets conducted for MobileMedia/MobileComm by Arthur K. Peters Consulting Engineers, however, MobileMedia/MobileComm is licensed for more than 900 transmitters on the frequency 931.8625 MHz and almost 800 on the frequency 931.8125 MHz.<sup>3</sup>

12. For each of these frequencies, the Peters Study determined the number of licensed facilities, the number of authorized facilities and the number of markets for which one or more stations are within 50 miles of the center of the top 200 markets.<sup>4</sup> As demonstrated by the Peters Study and MTel's Comments, the nationwide use of these three local frequencies by MobileMedia/MobileComm and MTel is virtually indistinguishable.

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<sup>3</sup> The top 200 markets, obtained from the FCC's list of cellular markets, were used in the Peters Study for purposes of comparison.

<sup>4</sup> A complete list of licensed and authorized stations, reflecting existing Commission records, is available upon request.

13. MTel says that it is operating over 700 stations on 931.4375 MHz in over 200 of the nation's largest markets.<sup>5</sup> On the frequency 931.8625 MHz, however, MobileMedia/MobileComm is licensed for 985 stations in 180 of the Top 200 markets. On 931.8125 MHz, MobileMedia/MobileComm is licensed for 785 stations in 130 of the Top 200 markets.

**2. MobileMedia/MobileComm and MTel are the Only 931 MHz Nationwide Licensees Whose Local 931 MHz Channels Augment Their Nationwide Operations.**

14. In light of MobileMedia/MobileComm's extensive use of frequencies 931.8125 MHz and 931.8625 MHz in connection with its nationwide operation on 931.8875 MHz, there is no legitimate reason for the Commission to retain a local designation on those frequencies while designating the frequency 931.4375 MHz as available nationwide only to MTel. Under any reasonable standard, all three channels effectively have been converted from local to nationwide use. With the number of stations authorized to MobileMedia/MobileComm on 931.8125 MHz and 931.8625 MHz, MobileMedia/MobileComm satisfies the Commission's nationwide exclusivity requirements applicable to either the 929 MHz or 931 MHz bands.<sup>6</sup> All

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<sup>5</sup> Presumably, as mentioned, MTel used the 733 cellular markets as a basis for its estimate of the total number of stations operated by MTel on 931.4375 MHz. The Peters Study used only the Top 200 markets, which understates the number of markets licensed nationwide to MobileMedia/MobileComm, as compared to MTel.

<sup>6</sup> See 47 CFR §§ 22.531(b), 22.551; 47 CFR § 90.495(a)(3).

three local frequencies -- or none -- should be reallocated as nationwide channels and excluded from the Commission's geographic licensing proposals.

15. Only MobileMedia/MobileComm and MTel are 931 MHz nationwide licensees with complementary nationwide operations on local 931 MHz channels. While there may be fewer other licensees on MTel's local channel, there may be a reason. For the past several years, contrary to the Commission's "first come, first served" application processing guidelines, the Commission staff has repeatedly declined to authorize the use of the frequency 931.4375 MHz to applicants other than MTel, even when that frequency was available for grant and MTel had not applied for its in a particular geographic area. In fact, the Commission recently cancelled almost 90 of MTel's licenses on the frequency 931.4375 MHz due to MTel's failure to construct its stations in a timely manner as required by the Commission's rules.<sup>7</sup>

16. MTel's assertion that no harm would be done to other applicants by licensing MTel nationwide on the frequency 931.4375 MHz, also may not be the case. Even after almost 90 of MTel's licenses on this frequency were cancelled for failure to construct, MTel has pending over 25 applications on this frequency that according to Commission records were "BLOCKED" by competing applications in certain geographic areas as of February 28, 1996. No similar "blocking" has

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<sup>7</sup> See Public Notices 60979 (December 13, 1995); 61015 (December 15, 1995); and 61433 (February 7, 1996).

occurred with respect to MobileMedia/MobileComm's use of the frequency 931.8625 MHz and little, if any, has occurred on the frequency 931.8125 MHz.

17. Even with over 700 transmitters, MTel's use of the frequency 931.4375 MHz falls short of its nationwide use of more than 900 transmitters on 931.9375 MHz. Clearly, MTel serves far fewer markets on 931.4375 MHz than it does on 931.9375 MHz. MobileMedia/MobileComm's operations on the frequencies 931.8125 MHz and 931.8625 MHz are at least as extensive relative to its nationwide operations on the frequency 931.8875 MHz.

18. Although the Commission did not articulate in any way the basis for its conclusion in the Notice that MTel occupies the frequency 931.4375 MHz on "virtually a nationwide basis,"<sup>8</sup> there is no reasonable distinction between MTel's occupation of that frequency and MobileMedia/MobileComm's occupation of frequencies 931.8125 MHz and 931.8625 MHz. A decision designating the frequency 931.4375 MHz as nationwide, while maintaining a local allocation for the frequencies 931.8125 MHz and 931.8625 MHz, would clearly be arbitrary and capricious and without factual or legal foundation. Melody Music, Inc. v F.C.C., 345 F.2d 730 (D.C. Cir. 1965); Garrett v. F.C.C., 513 F.2d 1056 (D.C. Cir. 1975); and New Orleans Channel 20, Inc. v F.C.C., 830 F.2d 361 (D.C. Cir. 1987).

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<sup>8</sup> Notice at paragraph 27.

**B. The Freeze Should be Lifted.**

19. The wide range of Comments submitted in this proceeding by small operators, regional licensees, large nationwide service providers, manufacturers, trade associations and others, unanimously opposed the freeze. There is no question, in the view of the Commenters, that continuation of the freeze will jeopardize the growth and success of the entire paging market. Furthermore, the Commission's interim proposals to ameliorate the effects of the freeze -- such as secondary licensing for sites that expand existing interference contours -- will be inadequate in the view of most Commenters to allow continued success of the industry.

20. In attempting to preserve "white areas" for future geographic licensing and auctions, the Commission's freeze on almost all paging applications ignores the tremendous historical growth of the paging industry -- which is expanding at a rate of 35% a year. As MobileMedia/MobileComm and many other Commenters pointed out, the freeze will prevent paging companies from adding capacity necessary to satisfy the requirements of thousands of new customers added daily to systems across the country. It will cause an immediate degradation of service to the public. It will prevent paging companies from offering new, competitive services in new geographic areas, as required by the subscribing public. It will jeopardize the continued provision of paging services to doctors, hospitals, emergency rescue workers, police,

firefighters and to Life Page, the organ transplant program endorsed by Vice President Gore.<sup>9</sup>

21. Even a sampling of the Comments submitted demonstrates the vocal, unanimous opposition to the freeze from across all levels of the paging industry:

- [T]he freeze, if allowed to continue, will cause devastating harm to the paging industry, which will have a "ripple effect" extending to subscribers, equipment suppliers, technical support personnel, and many others who conduct business with this industry." Brandon Comments, page 4.
- "In addition to inhibiting use of new advanced technologies, the freeze will prevent existing systems from conducting their day-to-day business, and meeting customer demand, contrary to the Commission's expressed intention." Coalition for a Competitive Paging Industry Comments, page 14.
- "Small paging carriers, and even medium-size carriers which have not had an opportunity to implement a substantial portion of their needed coverage, may not survive another series of delays in the processing of applications." Paging Coalition Comments, pages 4-5.
- "The Commission's freeze results in a backlog of equipment gathering dust in the warehouse." Glenayre Technologies, Inc. Comments, page 4.
- "Freezing these frequencies to assess their value as auction opportunities is equivalent to locking the barn several years after the

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<sup>9</sup> See, e.g., Comments of: Brandon Communications; Coalition for a Competitive Paging Industry; Frontier Corporation; Glenayre Technologies; Joint Comments of Paging Companies; Nationwide Paging, Inc. and PAGE-USA, INC.; Pacific Telesis; Paging Coalition; Paging Partner Corporation; Personal Communications Industry Association; Pioneer Telephone Cooperative, Inc.; Porter Communications, Inc.; Source One Wireless, Inc.; Trott Communications Group, Inc.

horses have ridden off with their second or third owner." Paging Partners Corporation Comments, page 3.

**C. In the Event that the Freeze is not Lifted, Modifications to the Freeze are Needed.**

22. The phenomenal growth of the paging industry simply cannot be accommodated under a freeze. Although some Commenters responded to the Commission's proposals for authorized "fill-in" sites and secondary licensing of sites extending interference contours, most Commenters made it clear that fill-ins and secondary sites alone will be inadequate for the industry to expand and serve the public.<sup>10</sup>

**1. Secondary Status will not Solve the Problems Caused by the Freeze but Would be "Better than Nothing."**

23. Secondary licensing status would be extremely disruptive to millions of customers who require continuous coverage while traveling across regions served by multiple sites. Secondary status at any one site in the system would, in effect, convert the entire system to secondary status. Neither customers nor lenders will accept secondary status as a basis to do business with a paging company. The paging industry will be unable to grow and expand its current 35% rate under the regulatory constraints of secondary use.

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<sup>10</sup> See, e.g., Joint Comments of Paging Companies; Comments of Pacific Telesis; Comments of Pioneer Telephone, Inc.

24. Secondary status, however, is "better than nothing." If the Commission forges ahead with its freeze, despite widespread opposition by the industry, secondary status may be the only available avenue for paging companies to increase coverage areas. To that extent, MobileMedia/MobileComm reluctantly supports those Commenters urging the Commission to allow incumbents to file new applications that expand or modify existing systems beyond existing interference contours, subject to secondary authorization.<sup>11</sup>

**2. Shared Channels, Unserved Areas and Control Channels Should be Exempt from the Freeze.**

25. In its Comments, MobileMedia/MobileComm urged the Commission to lift the freeze, especially for shared channels where no mutual exclusivity exists. MobileMedia/MobileComm Comments, page 16. The frequencies used by carriers operating on shared channels are not available to be auctioned on an exclusive basis. As a practical matter, there are no prospective auction revenues to be gained in the future by freezing applications for shared channels during this proceeding. MobileMedia/MobileComm agrees with the Personal Communications Industry Association ("PCIA"), Teletouch Licenses, Inc. ("Teletouch") and many other

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<sup>11</sup> Comments of American Paging, Inc., page 3; Comments of Joint Comments, page 19; Comments of PageNet, page 10.



Commenters, therefore, that the freeze should be lifted immediately for shared channels applications.<sup>12</sup>

26. The freeze is also unjustified in areas where paging services currently are not available. MobileMedia/MobileComm agrees with Consolidated Communications Mobile Services, Inc. ("Consolidated") that the Commission should accept and process applications of an incumbent to serve an adjacent area that is unserved by any paging licensee. Consolidated Comments, pages 4-5.

27. MobileMedia/MobileComm also supports the Comments of Hill & Welch, to the effect that the freeze should not apply to control channels. These channels are assigned site-by-site, not on a wide area basis, and are essential to continued operation of paging systems throughout the country.

28. Additionally, the freeze should be lifted at least in every instance where the frequencies at issue are not usable at a proposed site by a new applicant on an exclusive basis. When spectrum is unlikely to be of material value to anyone else (e.g., where the Commission's 70 mile rule effectively prevents new applications from being filed), existing licensees should be permitted to expand by adding new sites and frequencies.

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<sup>12</sup> PCIA Comments, page 21; Teletouch Comments, page 2.

**3. Current Interference Protection Rules Must be Preserved.**

29. Numerous Commenters responded to the Commission's proposals regarding appropriate interference contour protections. Although that issue will be addressed in greater detail during the next phase of this proceeding, it is critical for purposes of any freeze that the Commission not reduce, in any way, the maximum interference protections currently available under the rules. In light of the different interference contour protections applied to various paging frequencies (Notice at paragraphs 45-62), MobileMedia/MobileComm urges the Commission to apply the most lenient available standard (based on maximum permissible powers, e.g., 3500 watts for 931 MHz band frequencies, and antenna heights) so as to maximize the capability of existing licensees to operate existing systems and to expand services somewhat under the freeze. Like Ameritech Mobile Services, Inc. and other Commenters, MobileMedia/MobileComm opposes the retroactive adoption of a new substantive 931 MHz interference protection standard without a rulemaking.

**4. Some Extension of Interference Contours Should be Permitted on a Primary Basis.**

30. MobileMedia/MobileComm also supports those Commenters urging the Commission to consider allowing, under the freeze, at least some extension on a primary basis of the contours of existing systems. (See, e.g., Comments of Ameritech Mobile Services, Inc. and Comments of Paging Network, Inc., urging an

exception for certain incumbent licensees to expand coverage within 40 miles of existing systems; Comments of Brown and Swaninger, Comments of Page Telecommunications, L.L.C., Comments of Pioneer Telephone Cooperative, urging exemption for applications seeking to increase service areas of some systems by no more than 50%).

31. The Joint Commenters also suggested that if the Commission were unwilling to lift the freeze, it should at least accept and process applications of incumbent operators to add additional sites on a frequency already licensed to the carrier within the MTA, if the incumbent certifies that the composite reliable service area contour of existing stations on the frequency serve in excess of 66 2/3% of the MTA population. Joint Commenter Comments, pages 16-17. MobileMedia/MobileComm agrees that a freeze in order to preserve "white space" for auction is not justified in an area where the incumbent operator serves a substantial majority of the population and, for all practical purposes, would be the only party interested in acquiring that area in an auction.

**5. Nationwide Exclusivity on 929 MHz Must be Preserved and Protected.**

32. MobileMedia/MobileComm concurs with American Paging, Inc. that no other applicant should be able to apply for channels licensed to CCP and PCP licensees who have obtained nationwide exclusivity. American Paging Comments,

page 2. MobileMedia/MobileComm also agrees with the Joint Commenters' proposal that the Commission should provide incentives to carriers who now hold authority to construct a nationwide system by exempting them from the freeze as soon as they certify that they have placed in service a system that meets nationwide exclusivity criteria. Comments of Joint Commenters page 17.

33. On February 22, 1996, MobileMedia/MobileComm notified the Commission that it had satisfied the conditions of nationwide exclusivity established for the frequencies 929.1375 MHz and 929.5375 MHz. Accordingly, MobileMedia/MobileComm urges the Commission to consider it as the nationwide licensee on these frequencies and, therefore, permitted to install additional co-channel transmitter sites without restrictions pursuant to the exception to the freeze specified in paragraph 142 of the Notice.<sup>13</sup>

**6. Applications Should be Processed According to Existing MX Procedures and Auctions, if Applicable.**

34. Granting only applications cleared for processing as of the adoption date of the Notice, as proposed, would be unfair to all applicants whose applications are halfway through the Commission's lengthy licensing process. MX procedures

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<sup>13</sup> Cf., Comments of TSR Paging, Inc.

already in place for common carrier channels, coupled with auctions if ultimately adopted in this proceeding, should be used to resolve conflicts.

35. In light of the current delay of up to 24 months in processing 931 MHz applications, in particular, the Commission should provide a 30-day period within which applicants whose applications are blocked from being granted, as well as those applications that did not appear on Public Notice by December 6, 1995, could specify a particular frequency, as suggested by PCIA, the Joint Commenters and others. Another 30-day period, as contemplated by the Part 22 Rewrite Order, should be permitted for competing applications. Non-mutually exclusive applications then should be processed to grant. In order to process MX applications, the Commission should accept and process all pending applications and allow resolution of mutual exclusive situations through settlement (Comments of Joint Commenters, page 20) or competitive bidding (Brandon Comments, page 9).

**D. The Freeze Must be Resolved Promptly.**

36. MobileMedia/MobileComm joins many other Commenters in urging the Commission to resolve this proceeding quickly, regardless of the interim licensing procedures adopted. Many Commenters pointed out that the Commission's track record on expediting proceedings in order to minimize the duration of application

freezes has "not been very good."<sup>14</sup> With lengthy delays and processing freezes for 800 MHz SMR (1 1/2 years), MDS (3 years), and 220 MHz (4 1/2 years), many Commenters in this proceeding expressed concern that the Commission will create undue certainty in the dynamic paging market by prolonging resolution of the freeze in this proceeding.

37. The paging industry simply cannot flourish, grow and expand as it has done in the past five years under the cloud of a freeze or a prolonged regulatory proceeding questioning the basic premises of the Commission's regulatory structure. MobileMedia/MobileComm urges the Commission to resolve this proceeding expeditiously.

### **III. CONCLUSION**

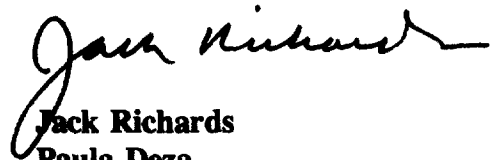
38. The Comments in this proceeding reflect the unified voice of the paging industry against any freeze. The freeze will cause an immediate degradation of service to the public. It will stymie growth of the paging industry, and it will prevent paging operators from serving the public efficiently and fully.

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<sup>14</sup> Comments of Joint Commenters, page 23.

**WHEREFORE, THE PREMISES CONSIDERED, MOBILEMEDIA/  
MOBILECOMM** urges the Commission to lift the freeze and to take such other  
action as is consistent with the views expressed herein.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jack Richards", with a stylized, flowing script.

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**CERTIFICATE OF SERVICE**

I, Jennifer M. Cardin, a legal secretary at the law firm of Keller and Heckman,  
hereby certify that on this 11<sup>th</sup> day of March, 1996, copies of **REPLY COMMENTS OF  
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